



City of San Diego

**TONY YOUNG**  
CITY COUNCIL PRESIDENT – DISTRICT 4

**CARL DEMAIO**  
CITY COUNCILMEMBER –DISTRICT 5

**LORIE ZAPF**  
CITY COUNCILMEMBER –DISTRICT 6

**DAVID ALVAREZ**  
CITY COUNCILMEMBER –DISTRICT 8

## MEMORANDUM

DATE: January 25, 2011

TO: Mayor and City Council

FROM: Council President Tony Young  
Councilmember David Alvarez  
Councilmember Lori Zapf  
Councilmember Carl DeMaio

RE: Small Business Reforms in 2011

*[Handwritten signatures in blue ink: Tony Young, David Alvarez, Lori Zapf, Carl DeMaio, and David Alvarez]*

As the economy continues to struggle through a market downturn and the unemployment level in San Diego remains a significant concern, supporting small businesses in the City of San Diego should be one of our top priorities as a City. This means finding ways to make the City of San Diego a help to small businesses, rather than a hindrance.

Currently, the City of San Diego contains numerous Business Improvement Districts (BIDs), which are administered by small, non-profit business associations working towards economic development within their areas throughout the City.

Businesses within BIDs pay assessments for the purpose of economic development within their area, and the City distributes the funds to the non-profit organizations that

administer each BID. This process is currently accomplished through an overly burdensome reimbursement policy where the administration organizations are forced to pay upfront expenses for their work within a district and then seek monthly reimbursement from the City.

This does not have to be the case. Other cities have implemented funding procedures that are less burdensome to the administrators of BIDs, yet contain sufficient checks and balances.

The City has recently imposed an additional 30-day waiting period for reimbursement checks on top of a process that typically takes as long as 60 days. This means that the non-profit administration organizations must now wait approximately 90 days (and sometimes up to 5 months) for reimbursements, creating significant cash flow problems and accounting headaches for these organizations. This decreases the effectiveness of BIDs to the detriment of small businesses throughout the City.

**Requested Action:** We request that Council Policy 900-07 be amended to include the suggested language below.

Further, we request that staff amend the annual Business Improvement District Operating Agreements (specifically sections 5.2 and 5.3) to ensure consistency with the changes to Council Policy 900-07 suggested below. The purpose of this amendment is to change the reimbursement system to a direct payment system.

*Disbursements to BIDs*

*BID Assessments are not public funds, but assessments that are collected from the merchants in a local community for economic development and distributed by the City of San Diego merely as an agent of fiscal management.*

*Therefore, those funds shall be distributed to the designated nonprofit that is under contract with the City of San Diego for administration of the BID on a 30 day cycle via direct payment that is made based on the available cash in treasury at the end of each 30 day cycle.*

*The association board shall use generally accepted accounting procedures for bookkeeping. All records of receipts and expenditures shall be kept in such a manner that will show:*

- *A daily record of receipts and expenditures (via accounting software)*
- *The amount received and disbursed*
- *The use of the funds and board action approving the annual budget or adjustments to the budget.*

CITY OF SAN DIEGO, CALIFORNIA  
**COUNCIL POLICY**

SUBJECT: BUSINESS IMPROVEMENT DISTRICTS

POLICY NO.: 900-07

EFFECTIVE DATE: September 10, 2001

BACKGROUND:

Business Improvement Districts (BID's) are governmentally-designated geographic areas formed to permit businesses to assess themselves to improve business conditions in community commercial areas. They are formed by the City Council under the provisions of State law (The Parking and Business Improvement Act law of 1989-SB 1424). The State legislature found that businesses located and operating within older commercial areas are at a competitive disadvantage with newer development because of inadequate parking, lack of organization and promotional programs. The legislature further found that it is in the public interest to promote the economic revitalization and physical maintenance of those older commercial areas in order to create jobs, attract new businesses and prevent erosion of the districts.

Oftentimes, voluntary merchant's associations serve as the catalyst to form a district. While effective, purely voluntary organizations by themselves benefit all businesses but draw their resources from only a minority. BID's permit the costs of improvements to be spread equitably over all those who benefit.

BID's are not voluntary organizations; they should, however, have the strong support of the underlying membership. They require annual budgets, assessments and hearings and generally have the same formation, administration and dissolution criteria as other governmental assessment entities. The City collects the assessment, contracts with a business association to carry out the improvement program and generally oversees the district operation. In its most successful form, however, the business district and its related association have a great deal of latitude in defining and carrying out their improvement programs with a minimum of bureaucratic intervention and related governmental overhead costs.

The following criteria shall apply to the operation of such BIDs:

Establishment

- Upon presentation of a petition signed by 20% of the eligible businesses within the proposed district, staff shall conduct a mailed ballot procedure of all eligible businesses. The procedure shall be held to determine whether a majority support exists among eligible businesses by assessed value and numerically that respond to the mailing. In the event that an assessed value and numerical majority of those responding support the formation, the City Council may proceed with a public hearing process.

- The district shall include only business tax certificate holders within the bounds established as part of the formation process and (optionally) rental unit business tax certificate holders.
- Businesses with Home Occupancy Permits may be excluded.
- Establishment shall be considered once annually prior to confirming the budget and levying the annual assessment for the following fiscal year.

#### Assessments

- The Council, as part of the annual confirmation of the various B.I.D. budgets, shall designate an entity, generally a non-profit business or merchant's association (the association) within each district to advise the Council on the district budget, assessments and activities and to carry out the improvement program.

Selection of the entity shall be based upon its involvement in small business affairs within the district, demonstrated track record and representation of business.

- The association shall be a legally formed California non-profit corporation whose membership shall include all businesses within the district holding current business tax certificates. The association shall elect its board at an annual meeting of the membership called for that purpose and shall take affirmative to assure its board reflects the ethnic and business diversity of the community; notice of the meeting shall be provided to all eligible businesses.
- Policy issues including assessment levels should be resolved through the board election process.
- Proposed reductions in assessment levels and changes to eliminate address ranges from the district boundaries shall be noticed to the BID membership. Any such proposed changes shall be approved by at least two-thirds of the association board of directors prior to City Council consideration as part of the annual confirmation of the various B.I.D. budgets.
- The City Treasurer shall collect the BID fees as part of the business tax certificate process. Fees collected shall be first applied against the BID fees due.

#### Disbursements to BIDs

- BID Assessments are not public funds, but assessments that are collected from the merchants in a local community for economic development and distributed by the City of San Diego merely as an agent of fiscal management.

Therefore, those funds shall be distributed to the designated nonprofit that is under contract with the City of San Diego for administration of the BID on a 30

day cycle via direct payment that is made based on the available cash in treasury at the end of each 30 day cycle.

The association board shall use generally accepted accounting procedures for bookkeeping. All records of receipts and expenditures shall be kept in such a manner that will show:

- A daily record of receipts and expenditures (via accounting software)
- The amount received and disbursed
- The use of the funds and board action approving the annual budget or adjustments to the budget

#### B.I.D. Modifications

1. Proposed increases in assessment levels should be approved by at least two-thirds of the association board of directors. Upon presentation to the City of the association meeting minutes indicating support for the increase, staff shall conduct a mailed ballot procedure of all affected businesses. The procedure shall be held to determine whether majority support of both the number of businesses and the value of the assessments, exists among eligible businesses that respond to the mailing. In the event that an assessed value and numerical majority of those responding support the increase in the levels of assessment, the City Council may proceed with a public hearing process to amend the B.I.D. ordinance. The public hearing process will include a first class mailing to all businesses in the B.I.D. to inform them of the proposed change in the ordinance and the date(s) of the public hearing(s).
2. Proposed expansions of B.I.D. boundaries should be approved by 20% of eligible businesses which fall within the expansion areas. The petition should clearly indicate the proposed levels of assessment and the modified B.I.D. boundaries. Upon presentation of the petition to the City, staff shall conduct a mailed ballot procedure of all eligible businesses within the expansion areas. The procedure shall be held to determine whether majority support exists among eligible businesses by assessed value and numerically that respond to the mailing. In the event than an assessed value and numerical majority of those responding support the expansion of the B.I.D. boundaries, the City Council may proceed with a public hearing process to amend the B.I.D. ordinance. The public hearing process will include a first class mailing to all businesses in the existing and expansion areas of the B.I.D. to inform them of the proposed change in the ordinance and the date(s) of the public hearing(s).
3. If an expansion of B.I.D. boundaries and an increase in assessments for existing business is proposed then both processes 1. and 2. above must occur but the noticing by first class mail to all businesses may be combined. In the event that the mailed ballot procedure does not indicate sufficient support to move forward with a public hearing process for increasing the levels of



assessment and/or expanding the B.I.D. boundaries, then the existing B.I.D. ordinance will remain in effect.

#### Disestablishment

- Disestablishment for any district shall be considered no more than once annually prior to confirming the budget and levying the annual assessment. The Council will consider disestablishment where strong support for such action is indicated by one or more of the following:
- upon presentation of a petition signed by 20% of the eligible businesses within the district, staff shall conduct a mailed election of all eligible businesses. The election shall be held to determine whether there exists at least 50% of eligible businesses by assessed value that support district disestablishment. In the event that 50% or more of the total number of eligible businesses by assessed value do not vote to support disestablishment, further proceedings shall cease and the district shall not be disestablished. Non-responses to the election shall not be deemed as supporting disestablishment. The Council will consider only one petition process per district for disestablishment in any three-year period.
- a resolution by at least four-fifths of the total number of directors of the association. In this event, the Council may proceed to disestablish the district or take any other appropriate action including district continuance.
- special circumstances as determined by the Council.
- In the event of disestablishment, the Council shall allow for an appropriate period to permit for a reasonable wind down of operations and to assure that existing contracts are not impaired. Any remaining assets shall be returned to those businesses of record who were current in their BID assessments at the effective date of the disestablishment ordinance. If the costs to return the remaining assets is greater than the amount of the assets, then the assets shall be spent on an eligible BID activity as determined by the City Manager.

#### Implementation

- The City Manager shall establish the necessary administrative procedures to implement this policy.

#### HISTORY:

“Formation of Business Improvement Districts”  
Adopted by Resolution R-265208 03/10/1986  
Retitled to “Business Improvement Districts” and  
amended by Resolution R-279400 02/10/1992  
Amended by Resolution R-290890 10/19/1998  
Amended by Resolution R-295443 09/10/2001